

A.C.C. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-24-2004

Reported in : (2005)(99)ECC622

Judge : S Kang, Vice, N T C.N.B.

Appellant : A.C.C. Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The appellant filed this appeal against Order-in-Appeal passed by the Commissioner (Appeals). In this case benefit of Modvat credit was denied to the appellant in respect of inputs used in the manufacture of final product. The contention of the appellant is that HOPE bags were made eligible for Modvat credit w.e.f.

16.3.95 and appellant filed their declaration on 23.3.95 under Rule 57G of Central Excise Rules and thereafter on 4.1.96, they filed an application under Rule 57H of Central Excise Rules for taking credit in respect of inputs lying in stock and used in the final product. The contention is that the credit was disallowed on the ground that the goods were not available for verification. The appellant relied upon the decision of the Hon'ble High Court of Madhya Pradesh in the case of Guilt Pack Ltd. v. Asstt. Collector, 1994 (45) ECC 59 (MP) : 1994 (69) ELT 222.

2. The contention of the Revenue is that as they have filed the declaration late, therefore, purpose of filing declaration was defeated as the goods were not available in stock and therefore, no verification can be carried out in respect of the inputs on which the appellant wants to take credit.

3. We find that the appellant filed this declaration and the benefit of the credit was denied only on the ground that inputs were not available. We find that Hon'ble High Court of Madhya Pradesh in the case of Guilt Pack Ltd, (supra) held that as per the provisions of Rule 57H of Central Excise Rules, 1944, there is no requirement that such inputs are ought to be lying in stock. The Hon'ble High Court held as under: "12. As a result of the aforesaid discussion we hold that the order impugned passed by the Asstt. Collector, Central Excise, Indore dated 9/11.4.91 (Annex. P4) disallowing the credit to the petitioners for the inputs received in the factory and used for production of the goods which were cleared from the petitioners' factory on or after 1st March, 1987, is erroneous. The order of the Asstt. Collector is, therefore, quashed to that extent. Instead it is directed that the credit for the inputs used for manufacturing goods cleared from the factory on 1st March, 1987 and thereafter shall be given to the petitioners. As a sufficiently long period has already elapsed, we further direct that the credit for the inputs as contained in Sub-clause (ii) of Rule 57H of the Rules shall be given to the petitioners on the strength of their declaration and the details of the inputs filed by them after taking an undertaking from the petitioners that in case on verification if any part of the statement is found to be factually incorrect they shall be liable to repay the sum. The verification has to be made on the basis of the record which is already with the Department and which may also be available with the manufacturers. The verification may be completed within a period of one month from the date of this Order".

4. In view of the above decision of the Hon'ble High Court, the impugned order is set aside and appeal is allowed with the direction that Modvat credit shall be allowed on verification as per decision of the Hon'ble High Court.